

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

RAUL DOMINGUEZ, et al

Plaintiffs

v.

STATE OF TEXAS, et al

Defendants

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Civil Action No. SA07CA0549 FB

**STATE OF TEXAS'S AND TEXAS HIGHER EDUCATION COORDINATING
BOARD'S RESPONSE TO PLAINTIFF SILVA'S MOTION TO
AMEND ORDER AND JUDGMENT**

Plaintiff, Jose Silva filed a motion asking the Court to amend its September 30, 2008 order and judgment dismissing all plaintiffs' claims as moot. For the reasons that follow, Defendants, the State of Texas and the Texas Higher Education Coordinating Board request the Court to deny Plaintiff Silva's motion.

Background

On September 30, 2008, the Court entered an order and judgment dismissing Plaintiffs' claims as moot. Doc. 103. The Court based its order on two important facts: that (1) the Higher Education Coordinating Board formally changed its rules to allow the plaintiffs to take advantage of the Hazlewood Exemption regardless of their citizenship at the time they entered the armed forces; and (2) the party-defendant Universities had reimbursed Plaintiffs the tuition they paid after they were denied the exemption. Doc. 102. In his motion immediately before the Court, Plaintiff Silva points out that he too sought damages from the Defendant State agencies, although Silva did not attend a Defendant university and did not sue the institution of higher education that deprived him of the Hazlewood exemption. According to Silva, because he

sought these damages in the lawsuit and because he has not been reimbursed, the Court erroneously granted the Defendant Universities' motion to dismiss. Doc. 105.

Argument

Plaintiff Silva attended San Antonio College ("SAC"). Doc. 90-2 at 8. He applied for but did not receive a Hazlewood Exemption. *Id.* Silva sought as damages *from the Defendants* the tuition he paid after not receiving the exemption *from SAC*. Now Silva claims the Court could "not reach the issue of mootness until the damages claim can be settled or resolved on the merits." Doc. 105.

On October 13, 2008, SAC---which is not a party to this litigation---agreed to reimburse Silva's tuition. In a good faith attempt to resolve all of the plaintiffs' issues without court intervention, on October 15, 2008, SAC issued a check to Silva in the amount of tuition he sought. Since Plaintiff Silva filed his motion, the State Defendants have tendered the check to Silva's counsel, along with a request that Silva cash the check, immediately sign the settlement agreement and release, and return it to the State Defendants' counsel. By then, Plaintiff Silva's claims will, without question, be moot---Defendants do not concede that any claims against them were not moot to begin with---and there will be no need for the Court to enter any additional orders in this case.

Conclusion

For the foregoing reasons, Defendants the State of Texas and the Texas Higher Education Coordinating Board respectfully request the Court to deny Plaintiff Silva's Motion to Amend Order and Judgment. In the alternative, Defendants request the Court to delay ruling on Plaintiff's motion and order the parties to update the Court of the case's status by November 10, 2008.

Respectfully submitted,

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Certificate of Service

I certify a true and correct copy of the foregoing document has been sent via electronic mail on Monday, October 27, 2008 to:

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